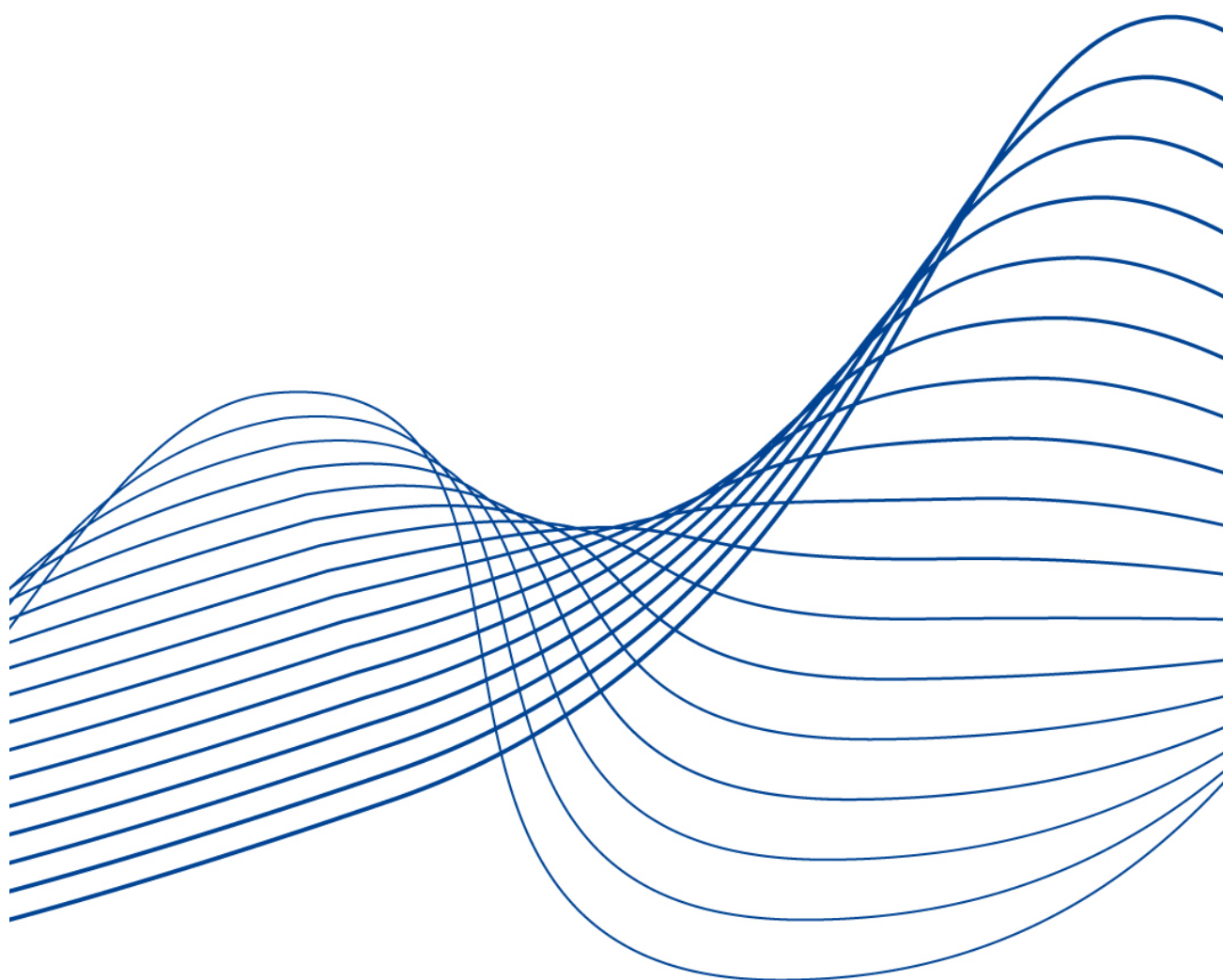


Handbook on the follow-up to ESRB recommendations



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Executive summary

In light of Recital 20 and Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on the European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (hereinafter the “[ESRB Regulation](#)”), the ESRB shall monitor the compliance of addressees with its recommendations (the “follow-up” to recommendations).

This handbook provides guidance on the steps that are to be followed in order to carry out an assessment of the implementation of ESRB recommendations by their addressees. These steps are:

- creating assessment teams;
- collecting information on addressee compliance;
- assessing addressee compliance;
- interacting with addressees;
- drafting the follow-up report for General Board decision-making; and
- communicating the results of assessments.

The handbook is designed for use by the assessment teams set up to monitor the follow-up to each recommendation. The handbook sets out the procedure for the assessment of addressee compliance with all (public and non-public) recommendations.

Assessing the implementation of ESRB recommendations involves making decisions on three levels, i.e. on (i) the type of addressee, (ii) the type of measures taken (legislative or other measures), and (iii) assessing the measures against a number of predefined assessment criteria. Addressees are rated for each criterion and in respect of each sub-recommendation. These ratings constitute the basis on which overall addressee compliance ratings are determined. Non-compliance is dealt with by means of a formal procedure. Justifications for inaction provided by addressees are also subject to assessment. A summary assessment of the implementation of the recommendation is then included in the follow-up report.

By 15 December 2014, the ESRB Secretariat will initiate a revision of the handbook based on experience gained.

Section 1 – Introduction and timelines

Pursuant to Article 17 of the ESRB Regulation, addressees shall communicate to the ESRB and the ECOFIN Council the actions they have taken in response to recommendations, and provide adequate justification for any inaction (the “act or explain” mechanism). Article 20 of the ESRB Rules of Procedure specifies that the General Board monitors the follow-up to ESRB recommendations and assesses the actions and justifications reported by the addressees. Individual ESRB recommendations further specify the scope of addressees’ reporting obligations.

Pursuant to Article 17 of the ESRB Regulation, if the ESRB establishes that its recommendation has not been followed or that the addressees have failed to provide adequate justification for any inaction, the ESRB may inform the addressees, the ECOFIN Council and, where relevant, the European supervisory authorities (ESAs) concerned. If the ESRB has made such a decision regarding compliance with a public recommendation, the European Parliament may invite the Chair of the ESRB to present that decision and the addressees may request to participate in an exchange of views.

The various steps for the assessment of addressee compliance include:

- creating assessment teams;
- collecting and processing information on compliance;
- assessing compliance on the basis of data received;
- interacting with the addressees;
- drafting the follow-up report for General Board decision-making; and
- communicating the results of the assessment.

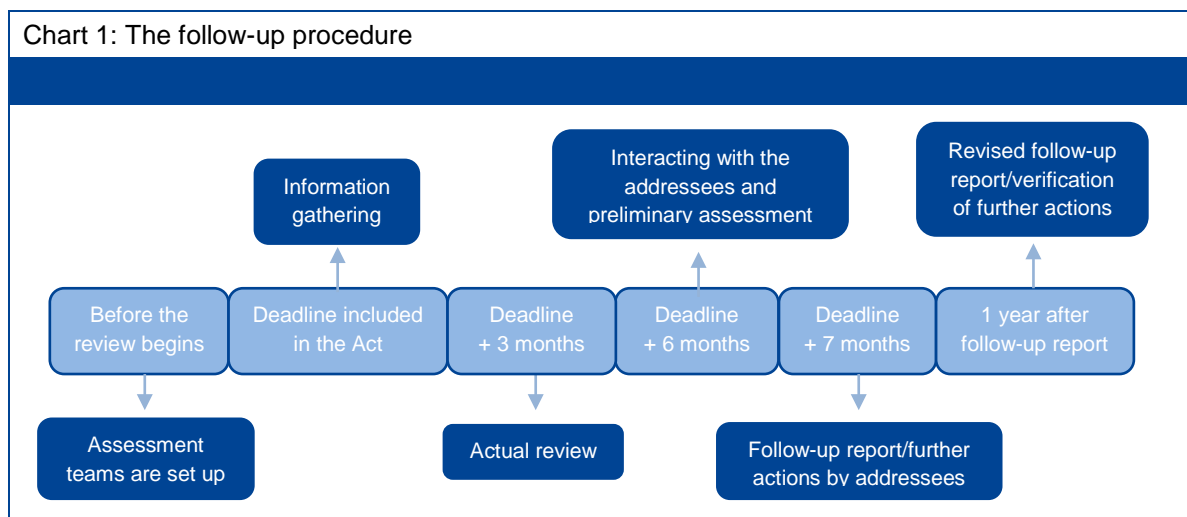


Chart 1 above provides an indicative view of the deadlines to be met in the course of the assessment. However, if, in light of the information received and the scope of the work planned for the review, it is considered that the default deadline for the assessment procedure is not feasible, a new timeline for the procedure shall be communicated to the addressees. Conversely, the various steps can always be finalised earlier than the deadlines set out in the chart.

Section 2 – Creating assessment teams

The assessment of addressee implementation of ESRB recommendations in accordance with Article 17 of the ESRB Regulation is carried out by an assessment team set up for this purpose.

An assessment team shall be formed for each of the recommendations assessed.

The composition of the assessment team shall be agreed on, in good time, before commencement of the assessment work. The Advisory Technical Committee (ATC) shall approve the composition of the assessment team. The assessment team shall be formed, to the extent possible, by the same ESRB team that prepared the recommendation. The assessment team will generally be composed of (i) members of the ESRB Secretariat, (ii) members of the ESRB and/or (iii) employees of the ECB. All members of the teams shall have the knowledge and experience necessary to perform the activities required for the assessments. They shall be committed to the work and shall devote the necessary time and effort to it.

Each assessment team shall have a head, appointed by the ATC, possibly but not necessarily from among ESRB Secretariat staff. This person shall be in charge of leading the assessment team and the review.

Nationals of a Member State should not take part in the assessment of the implementation of a recommendation by their own Member State.

In situations where any member of the team steps down, the head of the assessment team shall make a proposal to the ATC for a suitable replacement. The ATC shall approve the proposal in accordance with the general written procedure rules of the ATC.

The assessment team may, under exceptional circumstances, propose that all or some of the tasks of the review be delegated to externals/consultants. In such situations, the head of the assessment team shall deliver to the ATC a reasoned request on the matter for approval. The ATC shall only approve a delegation if the request is considered adequate, justified and proportionate, taking into account the type and volume of work involved in the particular assessment. Notwithstanding the delegation, the assessment team will be ultimately responsible for the assessment, shall oversee the work performed by the externals/consultants, and ensure a level playing field for the assessment. The head of the assessment team shall act as coordinator of the assessments carried out by externals/consultants.

All the members of the assessment team shall act in accordance with the rules of impartiality set forth in Article 7 of the ESRB Regulation and will act solely in the interest of the Union. They shall not follow instructions from their own Member States and/or institution. ESRB confidentiality rules apply to all the members of the team. Accordingly, Article 8 of the ESRB Regulation, Article 6 of Council Regulation (EU) No 1096/2010 and Article 22 of the ESRB Rules of Procedure or any further specific related provision, shall apply at all times. Externals/consultants will be subject to the rules of professional secrecy and will be bound by a corresponding confidentiality agreement. Where consultations take place with externals/consultants, a confidentiality agreement replicating the content of the above-mentioned rules shall be signed.

Section 3 – Collecting information on addressee compliance

Pursuant to Article 17(1) of the ESRB Regulation, the addressees are required to communicate to the ESRB the actions they have undertaken in response to the recommendation and provide adequate justification for any inaction. If the recommendation requires the addressees to deliver a specific type of report detailing the various actions undertaken to implement the recommendation or justifications for any inaction on their part, and sets a deadline for its delivery, a template of this report will be annexed to the recommendation. Where relevant, the ESRB shall inform the ESAs without delay of the answers received.

In some cases, a recommendation may require the delivery of an interim report focusing only on selected aspects of the implementation of the recommendation. However, the ESRB will not base its final decision regarding addressee compliance on these interim reports.

Once it has received the reports, the assessment team shall analyse them and verify that the information provided is sufficient to evaluate the measures undertaken by the various addressees. In cases where the information received is deemed insufficient, the assessment team will request further information from the addressee on the type and degree of implementation of the recommendation or justification for any inaction.

The assessment team may collect any additional information that it deems necessary for a period of up to three months from the deadline for submitting the initial information. In exceptional cases, the ATC may extend this deadline. The request for further information can be in the form of a questionnaire, or any other form. Information may be gathered not only from the addressees but also from other relevant sources. After the deadline for the collection of additional information has elapsed, the assessment team will begin its review of the data collected.

Delays in the delivery of information by addressees cannot result in extensions of the original deadlines. If the deadline for the provision of responses is not met, the assessment team will contact the addressee with a reminder that the report has not been received.

If the missing information so permits, the assessment procedure shall continue as planned for the remaining addressees. In case of addressees not providing the required information, the assessment team will inform the ATC.

Section 4 – Assessment of addressee compliance – criteria and ratings

Once all the necessary and requested information has been collected, the assessment phase shall begin. The data collected will be reviewed with the aim of drafting the follow-up report. The assessment team will review (i) reports submitted as requested in the recommendations; (ii) any questionnaires that have been completed; and (iii) any other relevant information collected during the information-gathering phase of the procedure. The final decision shall take into account all three types of information, when available.

The review of the data is based on a set of objective criteria. These [follow-up criteria](#) are general and apply to all cases. However, individual recommendations may include additional specifications. Below, a distinction is made between criteria to be applied to assess either (i) the implementation of recommendations, or (ii) justifications/explanations for any inaction.

The assessment of the implementation of recommendations shall always be governed by the principle of proportionality. Actions taken by the addressee can be deemed to fulfil the principle of proportionality if they are adequate to achieve the aims of the recommendation in light of the intensity of the risk targeted by the recommendation in the Member State in question, which may vary from one addressee to the other. This shall mean that, in the event that one or more of the sub-recommendations are intended to address a particular systemic risk that is not affecting a particular addressee, taking possible future structural changes into account, a justification/explanation to this end will be considered sufficient. While the focus should remain on the intensity of the risk targeted by the recommendation, applying the principle of proportionality also implies taking into account the differences in each of the addressees' national frameworks, when they have a relevant impact on substance.

Assessing [addressee implementation of recommendations](#) requires classifying the type of addressee (Level 1), the type of measure recommended (legislative or other measures, in Level 2) and assessing the degree of compliance with the recommendation (Level 3). Table 1 below provides a scoring card guiding the assessment teams through these three levels and providing a series of exemplificative questions that they should respond in the course of the assessment.

Level 1 focuses on the [different kinds of addressees of ESRB recommendations](#). Procedures for implementation differ according to the role and characteristics of each type of addressee. In order to account for further disparities between addressees, such as those related to proportionality, the assessment team might need to be provided with more specific information. The burden of proof regarding such disparities rests on the party alleging the difference, that is to say, the addressee.

Level 2 covers two types of addressee implementation, namely, [legislative measures](#) and any [other measures taken by the addressee](#). Assessing legislative measures may also involve the use of further assessment criteria such as legal certainty, equality, fairness, competence, subsidiarity and proportionality, whilst the criteria for assessing other measures are less prescriptive.

Section 4 – Assessment of addressee compliance – criteria and ratings

Table 1: Criteria for the assessment of addressee implementation

Level 1				
European Commission	Member States	ESAs	National supervisory authorities	Other
Level 2				
Legislative measure		Any other measures taken by the addressee		
Level 3				Rating
Status of the measure – Is the measure legally in force?				
Content/substance of the measure – Is implementation in line with the content of the recommendation?				
Appropriateness of the measure – Is the measure sufficient to reach the goal of the recommendation?				
In-/existence of circumvention – Do you see any loopholes which may weaken compliance /the effectiveness of the measure?				
Completeness of the response – Has all necessary information been provided?				

Level 3 criteria constitute the **actual criteria** for the **assessment of the** measures taken by addressees to implement recommendations. Depending on the substance of the recommendation, not all criteria will necessarily be of equal importance. The assessment team shall, before the commencement of the assessment and in line with the content and objectives of the recommendation, agree on the relevance to be given to each of the criterion. The criteria are set out below.

- **Status of the measure:** if the ESRB has recommended a legislative measure, this criterion is aimed at assessing whether that measure (i) has already been decided upon in the national/EU legislation; (ii) is draft legislation; (iii) is a legislative initiative or proposal; (iv) is a preparatory measure taken for the enactment of future legislation; or (v) there is no intention to implement the instrument in the national/EU legal framework. If the ESRB has recommended a different measure, the assessment team will specify the form of implementation.

Section 4 – Assessment of addressee compliance – criteria and ratings

- **Content/substance of the measure:** to assess whether the measure taken by the addressee satisfies the objectives and guidelines provided by the ESRB recommendation.
- **Appropriateness of the measure:** to assess whether the measure taken by the addressee is appropriate in terms of the context and environment it is taken in and that it is not contradictory to other legislation or other measures, and whether adequate resources are available.
- **In-/existence of circumvention:** to assess whether the addressee did or did not circumvent the recommendation.
- **Completeness of the response:** to assess whether all parts of the ESRB recommendation were fully and comprehensively reported, whether the addressee provided, where necessary, English translations (or at least an abstract in English) of laws, regulations, supervisory guidance, draft legislation or required data and other written material that might be relevant, and whether sufficient willingness to cooperate with the assessment team to facilitate the collection of further information was shown.

For each sub-recommendation, the assessment team will assign a compliance rating for each of the level 3 assessment criteria (“A” being the highest level of compliance and “E” the lowest). The assessment team will make an overall assessment of the implementing measures taken by the addressee on the basis of these ratings and the aggregate impact of those measures. When providing a rating, the assessment team shall apply the principle of proportionality as described earlier.

As a consequence of the “act or explain” mechanism, some addressees might not implement the measures requested by the ESRB recommendation, but rather provide a justification of or explanation for their lack of action. This justification/explanation will be reviewed under [a separate set of assessment criteria](#), with ratings similar to those described above (see Table 2) for each sub-recommendation. These criteria are:

- **Completeness of the justification/explanation:** to assess whether the justification sufficiently covers the substance areas covered by the recommendation;
- **Quality of justification/explanation:** to assess whether the justification provides clear reasons for the inaction; and
- **Reason for inaction:** to assess the motives for the addressee’s decision not to apply the measures recommended and to verify the appropriateness of such decision.

Section 4 – Assessment of addressee compliance – criteria and ratings

Table 2: Criteria for the assessment of explanations for inaction

Criteria	Rating
Completeness of the explanation	
Quality of the explanation	
Reason for inaction	

The final compliance rating given to an addressee for each sub-recommendation shall be determined by the assessment team, taking into account the ratings achieved, the relative importance of the different criteria, and the aggregate impact of the implementing measures taken (including a forward-looking assessment taking possible structural changes into consideration). The final compliance ratings are provided below, with some examples. The ratings below are indicative and consideration should also be given to the different importance of each of the criterion, as agreed by the assessment team, prior to the commencement of the assessment:

- a. **Fully compliant:** when all assessment criteria (specified in the handbook or in the recommendations) have been met and rated as A.
- b. **Largely compliant with minor discrepancies:** when almost all the assessment criteria have been met and only negligible requirements still require implementation. The addressee can be given such a rating when, for example, at least half of the criteria have been rated as A or B.
- c. **Partially compliant:** when almost all assessment criteria have been met with some deficiencies affecting the adequacy of the implementation, but without resulting in a situation where the recommendation has not been acted upon. An example would be a situation where the addressee has scored at least C for more than half of the criteria.
- d. **Materially non-compliant:** when the assessment criteria have been met to a degree resulting in a significant deficiency in the implementation of the recommendation. For example, the addressee can be rated materially non-compliant where it has scored D or E for more than half of the criteria.
- e. **Non-compliant:** when almost none of the assessment criteria have been met. For example, the addressee can be given this rating when all criteria have been rated E.

In **case of inaction**, the addressee will be assigned a rating showing whether its explanation/justification is adequate. **The ratings are as follows:**

- a. **Inaction sufficiently explained:** when the addressee provides a complete and logical explanation for the reasons underlying the lack of implementation of the recommendation. The explanation will be considered complete and logical if all the

Section 4 – Assessment of addressee compliance – criteria and ratings

assessment criteria for the explanations have been met or if only some less significant information is missing. The addressee can be granted such a rating when the review of explanations for inaction results in each component being given at least a C rating.

- b. **Inaction insufficiently explained:** When the explanation given for the lack of implementation is not sufficient to justify the inaction. An explanation would be considered insufficient if the criteria for the assessment of explanations have not been met at all or have not been met to a significant degree. The addressee can be granted such a rating when any of the components has been rated with D or E.

The results of the assessment phase will be the subject of the follow-up report (see section 6).

Section 5 – Dialogue with addressees

Dialogue with addressees shall be carried out in two stages. First, addressees will receive comments from the assessment team once the addressees' responses have been reviewed (enabling preliminary investigations into any issue to be carried out). Second, once all addressee responses have been assessed and peer reviewed, formal responses from the assessment team to the addressees will be sent, thus creating the preconditions for eventual further action by the addressees.

After the review has been carried out in respect of all addressees, cases classified as **materially non-compliant**, **non-compliant**, **partially compliant** or **inaction insufficiently explained** will be further discussed with the respective addressees. The assessment team will give the addressees the opportunity to explain the situation or provide further information.

If these discussions allow for a better understanding of addressee implementation or explanation of inaction, and convincingly show that previous assessments require reclassification, the new classification will replace the old one in the follow-up report.

There might also be cases where the assessment team and an addressee agree on further action to be taken within a new deadline. These cases will also be mentioned in the follow-up report. However, the initial assessment of compliance will be based on the level of compliance at the time of the initial deadline.

Without prejudice to the tasks of the General Board and the ATC, the ultimate responsibility for the assessment shall lie with the assessment teams. If an addressee disagrees with the assessment team's views regarding the level of compliance/non-compliance, it may request that a statement be annexed to the follow-up report. To this end, addressees shall be provided with a preliminary assessment of their implementation, at least one month before the submission of the follow-up report to the ATC.

Section 6 – Drafting the follow-up report for General Board decision-making

After assessing the material provided by the addressees and holding further discussions with them, the assessment team will draft a [follow-up report](#) containing the results of the review. The follow-up report will include not only an assessment of individual addressee compliance and non-compliance, but also a summary assessment of the overall level of implementation of the recommendation. This report will be subject to finalisation by the ATC before approval by the General Board.

Cases which are classified as [materially non-compliant](#), [non-compliant](#) and [inaction insufficiently explained](#) shall be flagged up in the follow-up report. [Partially compliant](#) addressees will be subject to further discussions within the ATC, who will decide whether these cases should be brought to the attention of the General Board.

The follow-up report must be finalised by the ATC within 7 months from the deadline for addressees to provide the information to the ESRB, or within the new deadline adopted and communicated by the assessment teams at the beginning of the procedure. The General Board will be asked to approve the follow-up report.

If, in the light of the outcome of the assessment carried out and the ATC considers it appropriate, the assessment team shall carry out [a revision of the review](#), in order to verify whether the actions agreed on with some of the addressees have been implemented. Based on the degree of implementation of the measures agreed upon with the assessment team, it shall revise the assessment accordingly.

In such cases, the assessment team will submit a revised follow-up report for consideration to the ATC before asking the General Board to approve it.

Once the follow-up report (or the revised follow-up report) has been approved by the General Board, the work of the assessment team will be considered complete and the team will be dissolved.

Section 7 – Communicating the results of assessments

Pursuant to Article 17(2) of the ESRB Regulation, where the follow-up report indicates that an ESRB recommendation has not been followed or that the addressees have failed to provide adequate justification for their inaction, the General Board shall, subject to strict rules of confidentiality, inform the addressees, the Council and, where relevant, the ESA concerned.

For the communication of the results of the assessment to the ECOFIN Council and the ESAs, the assessment team shall compile communication notes to be submitted first to the ATC and then to the General Board for approval. These notes shall explain the outcome of the follow-up, indicating which addressees complied or provided adequate justification and which did not comply or did not provide adequate justification.

In the case of public recommendations, these communication notes, in part or in whole, can be sent to the European Parliament and published in the ESRB Annual Report. Provided the addressees agree, the notes can also be published on the ESRB website. While the ESRB can make decisions on non-compliance public, this shall not prejudice the general principle that the ESRB cannot divulge any confidential information received, except in summary or aggregated form, in order to ensure that financial institutions cannot be identified.

